IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3965 of 1997
With
SPECIAL CIVIL APPLICATION No. 6156 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRISHNAVADAN D PACHHIGAR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DARSHAN M PARIKH for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.4,1.2.5
UNSERVED-EXPIRED (N) for Petitioner(s) : 1.2.1,1.2.2 NOTICE SERVED for Petitioner(s) : 1.2.3, 1.2.4,1.2.5 MR DHAVAL M BAROT for Petitioner(s) : 1.2.3
Mr. DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/04/2007

ORAL JUDGMENT

In Special Civil Application No. 3965 of 1997 filed under Article 226 of the Constitution of India the main grievance which has raised on behalf of the petitioner is with regard to non-payment/withholding of maintenance as well as salary grant. It is submitted on behalf of the petitioner that now the Diploma course is not in existence and/or not being run by the petitioner institute, and only the degree course which is conducted, and the petitioner is a self-financed institute, other reliefs are not required to be considered. Under the circumstances, now the only grievance which survives in this Special Civil Application is with regard to non-payment of maintenance and salary grant to the petitioner.

2. Shri Dipen Desai, learned AGP, on instruction from one R.D. Patel, Assistant Director working under respondent No.2, has submitted that it is not the case of the respondents that the petitioner is not entitled

to any amount towards maintenance grant and salary grant and in fact as on 31st March 2007 a sum of Rs. 7 lakhs has been paid to the petitioner on ad-hoc basis/on account and further payment is required to be considered after the accounts are audited. Under the circumstances, the respondents are directed to complete the entire process of auditing the accounts of the petitioner for the period in question and take appropriate decision with regard to entitlement of the amount due and payable to the petitioner by way of maintenance grant and salary grant. The said exercise be completed within the period of 3 months from today. If any amount is found to be due and payable to the petitioner after completion of audit of the accounts the respondents are directed to make payment to the petitioner such amount within the period of 4 weeks thereafter. Thereafter, if any grievance survive, it will be open for the petitioner to file a fresh petition which may be dealt with in accordance with law and on merits. The present Special Civil Application is required to be

disposed of.

3. Special Civil Application No. 6156 of 2002 is filed by the petitioner, Principal of the School run by the Trust who has preferred Special Civil Application No. 3965 of 1997. Shri Dhaval Barot, learned advocate appearing on behalf of respondent No.2 management has, while relying upon the affidavit-in-reply more particularly paragraph No.20 thereof, submitted that so far as the staff of B.H.M.S., are concerned, the course is a grant-in-aid course and the salaries are borne by respondent No.2 for which they have submitted salary bill. It is also further submitted by him on behalf of respondent No.2 that according to him, respondent No.1 should pay salaries to staff of DHMS course as the said course is a grant-in-aid course and the respondent No.1 in the past was paying the said salaries till September 2001. It is submitted that since the respondent No.1 has stopped paying salaries to the staff including the petitioner

after March 2001 just to see that the staff of the college including the petitioner and their families survive the respondent No.2 paid lump sum amounts to the extent of 60% of salaries with a condition that the said amounts to be repaid when the employees received their 100% salaries from the respondent No.1. It is submitted that so far as the salary bills of staff of DHMS course are concerned, the same are already submitted to the respondent No.1 and as stated above after completing the audit process necessary payment will be made. Under the circumstances, the respondent No.1 is also directed to consider the claim of the petitioner at the time of considering the bill submitted by the respondent No.2 towards the Maintenance Grant as well as the Salary Grant for which necessary direction is issued hereinabove. If ultimately it is found that the petitioner is entitled to 100% salary after completion of audit, then the payment already made by the respondent No.2 to the petitioner and others shall be reimbursed and/or adjusted accordingly and the balance

amount, if any, payable to the petitioner and/or other staff members of the DHMS may be paid to the petitioner and other members directly or through respondent No.2 as per the practice prevailing. With these, both these Special Civil Applications are disposed of with above liberty. Rule is discharged, however, there shall be no order as to costs.

[M.R. Shah, J.]

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